IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

ST.Rev..No. 241 of 2005()

TA.505/2002 of KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH,PALAKKAD
.....

REVISION PETITIONER:ASSESSEE/APPELLANT:

KOOLA TIMBER INDUSTRIES, IRINJALAKUDA,
TRICHUR DISTRICT, REPRESENTED BY ITS
MANAGING PARTNER, SRI. BABU GEORGE.

BY ADV. SRI.E.P.GOVINDAN

RESPONDENT: REVENUE/RESPONDENT:

STATE OF KERALA,
REP. BY SECRETARY, TAXES DEPARTMENT,
GOVT.SECRETARIAT, TRIVANDRUM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) MR.V.V.ASHOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.Dattu, C.J. & K.T.Sankaran, J.

S.T.Rev.No.241 of 2005

Dated, this the 31st day of May, 2007

ORDERR

H.L.Dattu, C.J.

This revision petition is filed against the order passed by the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench, Palakkad in T.A.No.505 of 2002 dated 19.3.2003 for the assessment year 1997-98.

2. The question of law that arises for our consideration and decision reads as under:

> "Whether on the facts and in the circumstances of the case the Appellate Tribunal was justified in holding that the petitioner is not eligible for the benefit of notification SRO No.1728/93 (as amended by SRO No.429/95) and has not the Tribunal committed an error in interpreting the notification SRO No.1728/93 (as amended by SRO No.429/95)"

The issue raised in this revision petition, in our view, is no more debatable in view of the law declared by this Court in the case of Smt.Mary Emmanuel v. State of Kerala, (2004) 12 KTR 258. In the said decision the Court has observed as under:

> "On a conspectus of item No.8 of the Schedule IV of Notification SRO 1728/93, column No.(2), (3) and the Explanation to it clearly indicates that the limit of Rs.50 lakhs mentioned in Column No.(2) refers only to the turnover relating to the goods manufactured by the unit and sold thereafter. It is not the "total turnover" of the dealer that is contemplated in columns (2) of items (8) of the Schedule IV of the Notification, but only the total turnover of the S.S.I. Unit. Of course the purchase turnover of raw materials for manufacture of the product by the S.S.I. Unit will also fall within the definition of 'total turnover' and 'turnover' as defined in Section 2(xxvi) and 2(xxvii) respectively. This is very clear from the Explanation to item No.8 of the Schedule to the S.R.O.1728/93 which is added with effect from 1.4.1995. Under the Explanation, if the turnover of the unit exceeds the limit of Rs.50 lakhs during the first year, the turnover exceeding Rs.50 lakhs alone will be subjected to tax at the higher rate. In other words, in a case where the turnover of the unit exceeds Rs.50 lakhs, the turnover up to Rs.50 lakhs is entitled to the concessional rate under the notification and the balance turnover alone will be subjected to tax at the higher rate. In other words, the turnover of trading goods (ie the goods not manufactured by the unit) is not included within item No.8 of the IVth Schedule to the notification. So far as the trading goods are concerned, there is no question of giving the concessional rate even if it falls within the limit of Rs.50 lakhs. So far as the exigibility of tax on the trading goods is concerned, the levy is under Sec.5(1) read with first or second schedule to the said Act (Paras 4 & 5).

> The very intention of Legislature is to give concessional rate for the S.S.I.Unit, whose "total turnover" does not exceed Rs.50 lakhs and therefore since the total turnover of the S.S.I.Unit is below Rs.50 lakhs, it is entitled to the concessional rate of 4% under the notification. The clarification issued by Commissioner of Commercial Taxes regarding the scope of item No.8 of the IVth Schedule of the notification SRO No.1728/93 does not appear to represent the correct legal position. The "total turnover" of the small scale industrial unit includes only the turnover of raw materials used in relation to the manufacture of the finished goods by the S.S.I.Unit within the State. For all these reasons, we set aside the orders of the assessing authority and the Tribunal on the question of concessional rate under the notification SRO No.1728/93 and restore the order of the first appellate authority.(Para 7)".

3. Respectfully following the observations made by a Division Bench of this Court, the question framed by the assessee requires to be answered in positive. Accordingly, the following:

Order

i) The revision petition is allowed.

ii) The order passed by the Tribunal in T.A.No.505 of 2002 dated 19th March, 2003 is set aside.

Iii) Now it is declared that the petitioner is entitled for the benefit of the notification SRO No.1728/93 as amended by SRO No.429/95 for the assessment year 1997-98.

Ordered accordingly.

(**H.L.Dattu)**
Chief Justice

(K.T.Sankaran)
Judge

vns